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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

TORIS TAVELLE TYLER,

Defendant and Appellant.

G052286

(Super. Ct. No. RIF1103458)

O P I N I O N

Appeal from a judgment of the Superior Court of Riverside County,  
Charles J. Koosed, Judge. Affirmed.

C. Matthew Missakian, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant  
Attorney General, Julie L. Garland, Assistant Attorney General, Alana C. Butler and  
Stephanie H. Chow, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury convicted Toris Tavelle Tyler of possessing marijuana for sale (Health & Saf. Code, § 11359) with an arming enhancement (Pen. Code, § 12022, subd. (a)(1)) and being a felon in possession of a firearm (former Pen. Code, §§ 12021, subd. (a)(1), 29800, subd. (a)(1); all further statutory citations are to the Penal Code unless noted). In Tyler’s previous appeal (*People v. Tyler* (Mar. 30, 2015, G050868) [nonpub. opn.]), we reversed and remanded the matter because the trial court had not adjudicated his motion under *People v. Hobbs* (1994) 7 Cal.4th 948 (*Hobbs*) to traverse and quash a search warrant that included sealed information provided by a confidential informant. The trial court denied the *Hobbs* motion on remand and reinstated the judgment. Our review discloses no error in the trial court’s *Hobbs* ruling, and we therefore affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

In June 2011, sheriff deputies executed a search warrant at Tyler’s residence in Moreno Valley and found about seven pounds of marijuana in three locations, three scales, two baggies, and a revolver. A deputy arrested Tyler in a traffic stop a short time later, and found two more baggies of marijuana and \$687 in cash. An incoming text message on Tyler’s phone stated, “Hit me back. I need a pound.” Tyler admitted to the officer he possessed the items found at his home, but in subsequent interviews variously claimed he did not own the gun or touch it, but also admitted carrying it for protection in the home when his housemate was away. Following a trial in 2013, the jury convicted Tyler as noted, and the trial court imposed an aggregate sentence of three years and eight months. In addition to remand on the *Hobbs* motion, Tyler’s prior appeal netted an eight month sentence reduction under section 654 for the felon in possession count.

On remand, the trial court considered Tyler’s original *Hobbs* motion, reviewed the search warrant, and heard testimony from the officer who obtained the

warrant. The court also considered questions Tyler posed to aid the court in its *Hobbs* review, including whether the confidential informant (CI) was a material witness who should testify, whether the CI's identity was properly deemed confidential, whether the source of the CI's information was firsthand or by other means, the basis for deeming the CI reliable, and whether there were "exculpatory facts of any kind."

## II

### DISCUSSION

At Tyler's request, we have independently reviewed the record and sealed materials underlying his *Hobbs* motion. (*People v. Martinez* (2005) 132 Cal.App.4th 233, 240-242.)

All or part of a search warrant affidavit may be sealed to protect the identity of an informant who has supplied probable cause for the warrant to issue. (Evid. Code, § 1041; *Hobbs*, *supra*, 7 Cal.4th at p. 971.) Under *Hobbs*, if the defendant moves to traverse or quash the warrant, the trial court must conduct an in camera hearing outside the defendant and defense counsel's presence to determine whether and how to keep the informant's identity confidential, if necessary. (*Hobbs*, at p. 972.)

If the trial court determines all or part of the affidavit must remain sealed to protect the informant's identity, it next must assess the defendant's motion to traverse. (*Hobbs*, *supra*, 7 Cal.4th at p. 974.) The court must determine whether there is a reasonable probability the affidavit included a false statement made knowingly and intentionally or with reckless disregard of the truth, and whether the false statement is necessary to a finding of probable cause to conduct the search. (*Ibid.*; accord, *Franks v. Delaware* (1978) 438 U.S. 154, 155-156.) The determination must be based on the public and sealed portions of the affidavit and any testimony offered at the in camera hearing. (*Hobbs*, at p. 974.) The trial court also must assess the likelihood the informant could provide exculpatory evidence, in which case the person must be disclosed as a material witness. (*People v. Lawley* (2002) 27 Cal.4th 102, 159-160.) The court must

deny the traversal motion if it lacks merit, but if there is a reasonable probability the defendant will prevail on the motion, the prosecutor must be given the option of an adverse order or disclosing the sealed materials. (*Hobbs, supra*, 7 Cal.4th at pp. 974-975.)

If the defendant moves to quash the warrant (§ 1538.5), the procedure is similar. The trial court must determine whether, under the totality of the circumstances, the affidavit and related materials furnished probable cause to issue the warrant. The requisite probable cause is established if, “given all the circumstances set forth in the affidavit . . . , there is a fair probability that contraband or evidence of a crime will be found in a particular place.” (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) If the court determines there is probable cause, the court must inform the defendant and deny the motion. (*Hobbs, supra*, 7 Cal.4th at p. 975.) If the court determines there is a reasonable probability the defendant will prevail in quashing the warrant, the prosecutor must either disclose the sealed materials to the defense or suffer the entry of an adverse order on the motion. (*Ibid.*)

Based on our independent review of the record, including the sealed and confidential search warrant application and affidavit, and the transcript of the court’s in camera hearing, we find there was probable cause to issue the warrant in this case and Tyler’s motion to traverse or quash the warrant was properly denied. Consequently, there is no *Hobbs* error to correct on appeal, and the *Hobbs* affidavits and all other documents which were already sealed and confidential shall remain so.

III  
DISPOSITION

The judgment is affirmed.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.